

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT
DIVISION FOUR

SCHECK INDUSTRIAL CORPORATION,))	No. ED100371
Plaintiff/Appellant,))	
vs.))	Appeal from the City of St. Louis
))	Circuit Court
TARLTON CORPORATION, ET AL.,))	Honorable Joan L. Moriarty
Defendant/Respondent.))	Filed: July 15, 2014

Scheck Industrial Corporation (Plaintiff) appeals the amended judgment of the Circuit Court of the City of Saint Louis entered after a bench trial in favor of Tarlton Corporation (Defendant) on Plaintiff's claims for account stated and breach of contract and on Defendant's counterclaims for breach of contract, breach of warranty, and indemnification, and for Defendant's request for attorney fees. On appeal, Plaintiff claims that the trial court abused its discretion by barring Plaintiff's retained expert from testifying. Plaintiff also claims that the trial court's amended judgment against Plaintiff on its claims of account stated and breach of contract is "against the manifest weight of the evidence and a misapplication of the law" because: (1) Defendant did not dispute Plaintiff's invoices and admitted it owed Plaintiff compensation for work performed; (2) Plaintiff performed its obligations under the Subcontract in a "workmanlike manner" and Defendant accepted Plaintiff's work thereby waiving its right to object; and (3) the Subcontract's "pay-if-paid" clause is inapplicable. Plaintiff further claims that the trial court's amended judgment for Defendant on its counterclaims is "against the manifest weight of the evidence and a misapplication of the law" because: (1) Defendant did not prove that Plaintiff's work was not performed in a "workmanlike" manner and Defendant failed to perform its obligations under the Subcontract, the Subcontract's warranty provision is inapplicable, and Defendant failed to mitigate its damages; (2) Defendant failed to establish it was entitled to indemnification under the Subcontract; and (3) Defendant failed to establish that it was entitled to damages or attorney fees.

AFFIRMED.

Division Four Holds: The trial court did not abuse its discretion by striking Plaintiff's untimely disclosed retained expert. The trial court's amended judgment is not against the weight of the evidence and/or a misapplication of the law as to Plaintiff's claims for account stated and breach of contract and Defendant's counterclaims for breach of contract, breach of warranty, and indemnification. The trial court's award of damages and attorney fees is not erroneous.

Opinion by: Philip M. Hess, J.
Lisa S. Van Amburg, P. J. and Patricia L. Cohen, J. concur.

Attorney for Appellant: Kurtis B. Reeg

Attorney for Respondent: Philip J. Christofferson

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
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